

No. 15902

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United States  
Court of Appeals  
for the Ninth Circuit

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YOICHI FUJII,

Appellant,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States,

Appellee.

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Transcript of Record

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Appeal from the United States District Court  
for the District of Hawaii

FILED

APR - 2 1958

PAUL P. O'BRIEN, CLERK



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for the Ninth Circuit

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For the Plaintiff:

YOICHI FUJII,  
A. L. WIRIN, ESQ., and  
FRED OKRAND, ESQ.,  
257 South Spring Street,  
Los Angeles 12, California.

For the Defendant, John Foster Dulles:

LOUIS B. BLISSARD, ESQ.,  
United States Attorney, By  
CHARLES B. DWIGHT, III, ESQ.,  
Asst. U. S. Attorney.,  
Federal Building,  
Honolulu, Hawaii.





In the District Court of the United States  
for the District of Hawaii

Civil No. 1300

YOICHI FUJII,

Plaintiff,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,

Defendant.

PROCEEDINGS UNDER SECTION 503  
UNITED STATES NATIONALITY ACT OF  
1940 (8 USCA SECTION 903)

### COMPLAINT

Comes now Yoichi Fujii, Plaintiff above named,  
and complaining of Defendant above named, shows  
as follows:

#### I.

That the Plaintiff is a citizen of the United States of America by virtue of his birth at Honolulu, City and County of Honolulu, Territory of Hawaii, on December 24, 1916; that the Plaintiff is at present residing at 1172 3-chome, Nakameguro, Meguro-ku, Tokyo, Japan; that the Plaintiff claims the Territory of Hawaii as his permanent residence and intends to reside therein.

#### II.

That the Defendant, John Foster Dulles, is the Secretary of State of the United States of America;

that the United States Department of State is an agency of the United States Government; and that the United States Foreign Service is a part of the United States Department of State.

### III.

That the Plaintiff last resided in the United States of America at Honolulu, aforesaid; that he left the United States on June, 1919, and has resided in Japan since that date.

### IV.

That from April, 1941, to September, 1945, the Plaintiff served in the Japanese Armed Forces.

### V.

That in April, 1947, the Plaintiff voted in elections in Japan.

### VI.

That quite sometime ago, the Plaintiff executed a Petition addressed to the American Consular Service at Tokyo, Japan, for the purpose of securing a passport in order that said Plaintiff might come to the Territory of Hawaii from Japan as an American citizen; that said Petition was supported by the necessary documents and affidavits; that all of the requests of the said American Consulate for information as to the Plaintiff's citizenship have been complied with to the best of the Plaintiff's ability; that the Plaintiff made inquiries of the said American Consulate as to the status of said Petition, but no determination has as yet been made by said Consulate as to said Petition.

VII.

That the non-action and inexcusable delay upon the part of said Consulate to issue to the said Plaintiff said passport is a denial of the Plaintiff's rights and privileges as a United States citizen.

VIII.

That the Plaintiff's service in the Japanese Armed Forces was not his free and voluntary act.

IX.

That the Plaintiff's voting in said elections was not his free and voluntary act.

X.

That in 1947, Japan was not a foreign state and said elections in which the Plaintiff voted were not political elections.

XI.

That as a result of said non-action, the Plaintiff is not able to enter the United States and such is a denial of his rights and privileges as a United States citizen.

XII.

That the Plaintiff claims that he is a United States citizen by virtue of the fact that he was born in the United States of America; that he is entitled to establish and to have this Court declare his United States Nationality under Section 503 of the United States Nationality Act of 1940; that as a citizen and national of the United States, he is entitled to a United States passport and to enter and reside in the United States.

Wherefore, Plaintiff prays for a judgment and decree adjudging that he is a citizen and/or national of the United States of America, and as such, is entitled to the rights and/or privileges of a citizen and/or national of the United States, including the right to be issued a United States passport and a right to enter and reside in the United States of America.

Dated at Honolulu, T. H., this 22nd day of December, A.D. 1952.

YOICHI FUJII,  
Plaintiff, By

A. L. WIRIN, FRED OKRAND,  
FONG, MIHO, CHOY &  
CHUCK,

By /s/ WALTER G. CHUCK,  
His Attorneys.

Duly Verified.

[Endorsed]: Filed December 23, 1952.

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[Title of District Court and Cause.]

Civil No. 1300

### MOTION TO DISMISS

Comes now John Foster Dulles, Secretary of State of the United States of America, Defendant above named, by his attorney, A. William Barlow, United States Attorney for the District of Hawaii, and moves that the Complaint herein be dismissed on the ground that the Plaintiff has failed to state a

claim or cause of action against the Defendant upon which relief can be granted.

Dated: Honolulu, T. H., this 10th day of February, 1953.

A. WILLIAM BARLOW,  
United States Attorney,  
District of Hawaii;

By /s/ WINSTON C. INGMAN,  
Asst. United States Attorney,  
District of Hawaii.

[Endorsed]: Filed February 11, 1953.

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[Title of District Court and Cause.]

Civil No. 1300

NOTICE OF MOTION FOR LEAVE TO FILE  
AMENDED COMPLAINT

To the Defendants Above Named; to Its Attorneys,  
A. William Barlow, United States Attorney, and  
Louis B. Blissard, Assistant United States At-  
torney:

Please Take Notice: On the 9th day of December, 1953, at the hour of 9:00 a.m., before the Honorable Jon Wiig, Judge of the above-entitled Court, or whatever Judge who is handling the affairs of said Judge Wiig in his Courtroom, in the Federal Building, Honolulu, T. H., Plaintiff will move the Court for leave to file the Amended Complaint, a copy of which is attached hereto by reference.

Dated at Honolulu, T. H., this 1st day of December, A.D. 1953.

FONG, MIHO, CHOY & CHUCK,  
A. L. WIRIN & FRED OKRAND,

By /s/ K. MIHO,  
Attorneys for Plaintiff.

[Title of District Court and Cause.]

Civil No. 1300

### AMENDED COMPLAINT

Comes now Yoichi Fujii, Plaintiff above named, and complaining of Defendants above named, shows as follows:

#### I.

That the Plaintiff is a citizen of the United States of America by virtue of his birth at Honolulu, City and County of Honolulu, Territory of Hawaii, on December 24, 1916; that the Plaintiff is at present residing at 1172 Naka Meguro 2-chome, Meguro Ku, Tokyo, Japan; that the Plaintiff claims the Territory of Hawaii as his permanent residence and intends to reside therein.

#### II.

That the Defendant, John Foster Dulles, is the Secretary of State of the United States of America; that the United States Department of State is an agency of the United States Government; and that the United States Foreign Service is a part of the United States Department of State.

III.

That the Plaintiff last resided in the United States of America at Honolulu aforesaid; that he left the United States on June, 1919, and has resided in Japan since that date.

IV.

That from April, 1941, to September, 1945, the Plaintiff served in the Japanese Armed Forces.

V.

That in April, 1947, the Plaintiff voted in elections in Japan.

VI.

That quite sometime before the filing of this suit, the Plaintiff executed a Petition addressed to the American Consular Service at Tokyo, Japan, for the purpose of securing a passport in order that said Plaintiff might come to the Territory of Hawaii from Japan as an American citizen; that said Petition was supported by the necessary documents and affidavits; that the Plaintiff was issued a "Certificate of the Loss of the Nationality of the United States," on the ground that the Plaintiff lost his United States citizenship by serving in the Japanese Army; that said disapproval and the refusal by the Consular Service to issue to the Plaintiff a passport is a denial of the Plaintiff's rights and privileges as a United States citizen.

VII.

That Plaintiff's service in the Japanese Armed Forces was not his free and voluntary act.



## VIII.

That as a result of said disapproval and denial by said Consular Service, the Plaintiff is not able to enter the United States of America and such a denial of his rights and privileges as a United States citizen.

Wherefore, the Plaintiff prays for judgment and a decree adjudging that the Plaintiff did not lose his United States citizenship by virtue of his service in the Japanese Armed Forces, pursuant to Section 401 (c) of the Nationality Act of 1940, and that he is a citizen and/or national of the United States of America and as such is entitled to the rights and/or privileges including the right to be issued a United States passport and the right to enter and reside in the United States of America.

Dated at Honolulu, T. H., this 1st day of December, A.D. 1953.

YOICHI FUJII,

Plaintiff, By

FONG, MIHO, CHOY & CHUCK,  
A. L. WIRIN, FRED OKRAND,

By /s/ K. MIHO,

His Attorneys.

Duly Verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 2, 1953.



[Title of District Court and Cause.]

Civil No. 1300

AMENDED AND SUPPLEMENTAL  
COMPLAINT

Plaintiff alleges:

I.

Plaintiff, Yoichi Fujii, is a citizen of the United States. He was born at Honolulu, Territory of Hawaii, on December 24, 1916. He claims the Territory of Hawaii, within this district as his permanent residence.

II.

Defendant, John Foster Dulles, is the Secretary of State of the United States of America. As such he is the head of the Department of State.

III.

From April, 1941, to September, 1945, Plaintiff served in the Japanese Armed Forces. In April, 1947, Plaintiff voted in elections held in Japan.

IV.

Plaintiff's service in said Armed Forces was not his free and voluntary act. Plaintiff's voting in said elections was not his free and voluntary act.

V.

On or about October 29, 1952, Plaintiff applied at the Consular Division of the American Embassy in Tokyo, Japan, to be registered as a citizen of the United States. Said Consular officials did not reg-

ister Plaintiff as a citizen of the United States on the day he applied therefor. Instead, on December 29, 1952, the American Vice Consul at Tokyo executed as to Plaintiff a Certificate of the Loss of the Nationality of the United States on the ground that Plaintiff had lost his United States citizenship by reason of his said service in the Japanese Armed Forces. Said Certificate was approved by the Department of State in Washington, D. C., on July 23, 1953, and sent to the Plaintiff by the said Consular Office on September 25, 1953.

Wherefore, Plaintiff prays for judgment declaring that he is a National of the United States and did not lose his United States citizenship by reason of his service in the Japanese Armed Forces or by reason of his having voted in said election in Japan in April, 1947.

Dated at Honolulu, Territory of Hawaii this 25th day of June, 1954.

YOICHI FUJII,  
Plaintiff, By

FONG, MIHO, CHOY & CHUCK,  
A. L. WIRIN, FRED OKRAND,

By /s/ K. MIHO,  
His Attorneys.

Duly Verified.

[Endorsed]: Filed June 25, 1954.

[Title of District Court and Cause.]

Civil No. 1300

MOTION TO STRIKE AND MOTION TO DIS-  
MISS AMENDED AND SUPPLEMENTAL  
COMPLAINT

The Defendant moves the court as follows:

1. To strike from the Plaintiff's Amended and Supplemental Complaint the following:

All that part of Paragraph V appearing on Page 2 which starts with "Instead, on December 29, 1952 \* \* \*"

For the grounds of this Motion Defendant, John Foster Dulles, says that the allegations are immaterial and impertinent and are supplemental matters not allowed by the court in its ruling filed herein on May 28, 1954.

2. To dismiss the action because the Complaint fails to state a claim against the Defendant upon which relief can be granted.

For grounds of this Motion Defendant, John Foster Dulles, says that the Amended and Supplemental Complaint fails to cure the defects contained in the previous Complaint, which defects were found by Judge Wiig to justify granting Defendant's Motion to Dismiss.

Dated: Honolulu, T. H., this 7th day of July,  
1954.

A. WILLIAM BARLOW,  
United States Attorney,  
District of Hawaii;

By /s/ LOUIS B. BLISSARD,  
Asst. United States Attorney,  
District of Hawaii.

[Title of District Court and Cause.]

Civil No. 1300

### NOTICE OF HEARING

To: Fong, Miho, Choy & Chuck,  
Suite 202, Alakea Building,  
Alakea and King Streets,  
Honolulu, T. H., Attorneys for Plaintiff.

Please Take Notice that the Motion to Strike and Motion to Dismiss Amended and Supplemental Complaint herein will be presented to the Honorable J. Frank McLaughlin, Judge of the United States District Court for the District of Hawaii, in his courtroom in the Federal Building, Honolulu, T. H., on Friday, July 23, 1954, at 10:00 a.m., or as soon thereafter as counsel may be heard.

Dated: Honolulu, T. H., this 7th day of July,  
1954.

A. WILLIAM BARLOW,  
United States Attorney,  
District of Hawaii;

By /s/ LOUIS B. BLISSARD,  
Asst. United States Attorney,  
District of Hawaii.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 7, 1954.

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[Title of District Court and Cause.]

Civil No. 1300

### ORDER OF DISMISSAL

The Motion to Dismiss of the defendant, John Foster Dulles, having heretofore come on to be heard before the Court; the petitioner having been represented by his counsel, Katsuro Miho, Esquire, and the defendant having been represented by Louis B. Blissard, Esquire, Assistant United States Attorney of this district; the motion having been fully argued and submitted to the Court for decision; the Court having found the motion to be well taken on the ground stated therein, namely, that the plaintiff has failed to state a claim or cause of action against the defendant upon which relief can be granted, be-

cause at the time the instant suit was filed the petitioner had not actually been denied a passport or other right or privilege as a national of the United States; the Court having given the petitioner thirty (30) days within which to amend the complaint if he could plead facts which would state a claim upon which relief could be granted; petitioner having filed on June 25, 1954, an Amended and Supplemental Complaint and the defendant having thereupon on July 7, 1954, filed a Motion to Strike and Motion to Dismiss the Amended and Supplemental Complaint, and this said motion having come on to be heard before the Court on August 24, 1954; the motion having been fully argued and submitted to the Court for decision; the Court having found the motion to be well taken on the ground stated therein, namely, that the Amended and Supplemental Complaint contained allegations which were not amendatory matter which the Court had allowed or anticipated allowing in the leave to file an amended complaint and that the complaint does not state a cause of action against the defendant upon which relief can be granted.

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that the portion of Paragraph V on Page 2 of the Amended and Supplemental Complaint beginning with the words "instead, on December 29, 1952," down through the words "September 25, 1953," be stricken and that this cause and the petition herein be and the same are dismissed.

Dated: Honolulu, T. H., this 23rd day of September, 1954.

/s/ JON WIIG,

Judge, United States District  
Court.

No Objection as to Form:

/s/ K. MIHO.

Endorsed]: Filed September 23, 1954.

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[Title of District Court and Cause.]

Civil No. 1300

MOTION FOR LEAVE OF COURT TO FILE  
AMENDMENT TO AMENDED AND SUP-  
PLEMENTAL COMPLAINT

The Plaintiff moves for leave of Court to file an Amendment to the Amended and Supplemental Complaint, which said Amendment is submitted herewith and attached hereto.

The Amendment proposed, constitutes a substitution for Paragraph V of the Amended and Supplemental Complaint herein.

It pertains to the same ground set forth in the original Complaint herein, and in the Amended and Supplemental Complaint herein.

See F.R.C.P. 15(c); and Fujii vs. Dulles (CCA9) 224 Federal 2nd 906.



This Motion is based upon all the records and files of this case, and upon the Affidavit of A. L. Wirin submitted herewith.

Dated: Honolulu, T. H., April 27, 1956.

FONG, MIHO, CHOY & CHUCK,  
A. L. WIRIN, FRED OKRAND,

By /s/ A. L. WIRIN,  
Attorneys for Plaintiff.

[Title of District Court and Cause.]

Civil No. 1300

AFFIDAVIT OF A. L. WIRIN IN SUPPORT  
OF MOTION FOR LEAVE TO FILE  
AMENDMENT TO AMENDED AND SUP-  
PLEMENTAL COMPLAINT

Territory of Hawaii,  
City and County of Honolulu—ss.

A. L. Wirin, being first duly sworn, on oath, deposes and says:

That he is one of the attorneys for the Plaintiff in the within case;

That at the time of the filing of the original Complaint herein and at the time of the filing of the Amended and Supplemental Complaint herein, neither the Affiant, nor any of the attorneys for



the Plaintiff knew the facts as set forth in the proposed Amendment to the Amended and Supplemental Complaint. Said facts came to the attention of the Affiant, in April, 1956, when the Affiant conferred personally with the Plaintiff in Tokyo, Japan; and

Further Affiant sayeth naught.

Dated: Honolulu, T. H., April 27, 1956.

A. L. WIRIN.

Subscribed and sworn to before me this 27th day of April, 1956.

[Seal]      /s/ WINNIE LIN UNG CHANG,  
Notary Public, First Judicial  
Circuit Court, Territory of  
Hawaii.

My Commission Expires January 31, 1960.

[Title of District Court and Cause.]

Civil No. 1300

AMENDMENT TO AMENDED AND  
SUPPLEMENTAL COMPLAINT

V.

In the early part of 1948, the Plaintiff went to the office of the United States Consul at Yokohama, Japan, for the purpose of applying for return to the United States; but the Plaintiff was advised by an official at the office of the United

States Consul, which official spoke both English and Japanese, that the United States Consul was not accepting applications for return to the United States, because of the then Occupation.

In November, 1951, the Plaintiff received a communication from the United States Consul at Tokyo, Japan, a copy of which is annexed hereto, marked Exhibit "A" and incorporated herein by reference. Thereupon, the Plaintiff set about to comply with the various requirements listed in the memorandum, referred to in said Exhibit "A" including a certificate from the proper Japanese Army Authorities pertaining to the details of service by the Plaintiff in the Japanese Army, a statement from the proper authorities at Hiroshima containing the details of the Plaintiff's voting in Hiroshima during the post-war elections in Japan, and, particularly, a record of birth in the United States.

With respect to the last item, the Plaintiff encountered considerable delay because there was no record of the Plaintiff's birth in Hawaii, either at the Board of Vital Statistics or at the office of the Secretary of the Territory of Hawaii at Honolulu; accordingly, it was necessary for the Plaintiff to secure secondary evidence of the Plaintiff's birth in the form of an affidavit of a person qualified to testify to the date and place of birth of the Plaintiff.

In order to secure this secondary evidence, the Plaintiff engaged in extended correspondence with his cousin, George Fujii, who ultimately was able to secure an Affidavit of Identity from Goichi Morioka

of Honolulu. This affidavit was secured in Honolulu on October 24, 1952, was forwarded to the Plaintiff by air mail from Honolulu and was submitted by the Plaintiff to the United States Consul in Tokyo, immediately upon receipt by him of said affidavit in Japan on October 29, 1952. On which date, the Plaintiff filed with said United States Consul, a formal application to establish his United States citizenship, accompanied by all of the documents required by the United States Consul pursuant to the letter from the United States Consul of November 8, 1951, and the requirements listed in the memorandum forwarded to the Plaintiff by said United States Consul as set forth in Exhibit "A" annexed hereto.

The United States Consul at Tokyo with respect to the application by the Plaintiff formally filed on October 29, 1952, did not act promptly thereon, but on the contrary neglected to act formally upon said application; and, inexcusably and arbitrarily postponed action until December 29, 1952, knowing well, during November and December, 1952, that on December 24, 1952, the Immigration and Nationality Act of 1952 was to go into effect.

Additionally, said United States Consul arbitrarily and inexcusably neglected to report his action of December 29, 1952, issuing a Certificate of Loss of Nationality to the Plaintiff, so that said action of said Consul was not approved by the State Department in Washington, D. C., until July 23, 1953.

Dated: Honolulu, T. H., April 27, 1956.

FONG, MIHO, CHOY & CHUCK  
A. L. WIRIN & FRED  
OKRAND,

By /s/ A. L. WIRIN,  
Attorneys for Plaintiff.

### EXHIBIT A

The Foreign Service of the United States  
of America

Address Official Communication to:  
American Consular Service,

Norin Chuo Kinko, 9 Yuraku-cho,  
1-chome, Chiyoda Ku, Tokyo.

November 8, 1951.

Mr. Yoichi Fujii,  
1172 Naka Meguro 3-chome,  
Meguro Ku, Tokyo.

Sir:

Reference is made to previous correspondence between you and the Consulate at Yokohama.

It is noted that you have never made formal application to establish your claim to citizenship. You are invited therefore to apply for registration or for a passport to return to the United States. There is enclosed a memorandum entitled "American Citizenship of Persons of Japanese Ancestry Resi-

dent in Japan," which lists the items which are required in connection with an application for registration or passport. It is suggested that you comply with all the requirements listed in the memorandum, and then forward to this office the last page of the memorandum which is a request for appointment to establish your claim to citizenship. An application may be made by you even in the event that you have performed an act which apparently resulted in the loss of United States citizenship.

Very truly yours,

**RICHARD D. NETHERCUT,**  
American Vice Consul.

Enclosure:

Memorandum.

[Endorsed]: Filed April 30, 1956.

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[Title of District Court and Cause.]

Civil No. 1300

**MOTIONS TO SET ASIDE AND RELIEVE  
PLAINTIFF OF (a) ORDER OF DISMISSAL  
AND (b) ORDER STRIKING PORTIONS  
OF AMENDED AND SUPPLEMENTAL  
COMPLAINT**

To the defendant, above named, and to his attorney, Louis B. Blissard, United States Attorney,  
Please Take Notice:

1. Plaintiff moves the court to set aside and relieve plaintiff of the order of dismissal dated September 23, 1954.

2. Upon the granting of said Motion, plaintiff moves the court to set aside its order of September 23, 1954, striking portions of Paragraph V of the Amended and Supplemental Complaint.

These motions are made on the ground that the first motion comes within the provisions of Rule 60(b) (6), Federal Rules of Civil Procedure and that the second was error in law which should be corrected by the court. Said motions are based on the affidavit and Memorandum of Points and Authorities attached hereto, and upon all the records and files of this case.

Dated: April 27, 1956.

FONG, MIHO, CHOY AND  
CHUCK,

A. L. WIRIN & FRED  
OKRAND,

By /s/ FRED OKRAND,  
Attorneys for Plaintiff.



[Title of District Court and Cause.]

Civil No. 1300

AFFIDAVIT OF KATSURO MIHO

Territory of Hawaii,  
City and County of Honolulu—ss.

Katsuro Miho, being first duly sworn, on oath,  
deposes and says:

That he is one of the attorneys for the Plaintiff  
in the within action;

That at the time this Court considered and passed  
upon the Defendant's Motion to Dismiss the  
Amended and Supplemental Complaint, on August  
24, 1954, the Affiant requested the Court to defer  
decision until action by the Court of Appeals for  
the Ninth Circuit in the case of Junso Fujii vs.  
Dulles, 1261, in this Court and then pending on ap-  
peal in the Court of Appeals for the Ninth Circuit  
(14460 therein), counsel for the Defendant herein  
objected to this Court deferring its decision, and a  
colloquy occurred between the Affiant, the United  
States Attorney and the Court. As the result of  
said colloquy, the Affiant was under the impression  
that it was not necessary for the Plaintiff herein to  
take an appeal from the Court's ruling; and that in  
the event the Judgment then on appeal in the said  
Junso Fujii case were reversed by the Court of Ap-  
peals, the Plaintiff might proceed herein to take ad-  
vantage of any favorable ruling in said Junso Fujii  
case. Accordingly, the Plaintiff herein did not ap-  
peal to the Court of Appeals for the Ninth Circuit

from the Order of the Court herein dismissing the Amended and Supplemental Complaint; and

Further Affiant sayeth naught.

Dated: Honolulu, T. H., April 27, 1956.

/s/ KATSURO MIHO,

Subscribed and sworn to before me this 27th day of April, 1956.

[Seal] /s/ WINNIE LIN UNG CHANG,  
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires: 1-31-60.

[Endorsed]: Filed April 30, 1956.

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In the United States District Court  
for the District of Hawaii  
Civil No. 1487

YOICHI FUJII,

Plaintiff,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,

Defendant.

### COMPLAINT

(For Declaration as to United States Citizenship)

Plaintiff alleges:

#### I.

Plaintiff, Yoichi Fujii, is a citizen of the United States. He was born at Honolulu, Territory of Ha-



waii, on December 24, 1916. He claims the Territory of Hawaii, within this district as his permanent residence. He is now temporarily in Japan.

## II.

Defendant, John Foster Dulles, is the Secretary of State of the United States of America. As such he is the head of the Department of State.

## III.

This court has jurisdiction under Section 503, Nationality Act of 1940 (8 USC 903) and Section 405(a), Immigration and Nationality Act of 1952 (note to 8 USC 1101).

## IV.

From April, 1941, to September, 1945, plaintiff served in the Japanese Armed Forces. In April, 1947, plaintiff voted in elections held in Japan.

## V.

Plaintiff's service in said Armed Forces was not his free and voluntary act. Plaintiff's voting in said elections was not his free and voluntary act.

## VI.

In the early part of 1948 the plaintiff went to the office of the United States Consul at Yokohama, Japan, for the purpose of applying for return to the United States; but the plaintiff was advised by

an official at the office of the United States Consul, which official spoke both English and Japanese, that the United States Consul was not accepting applications for return to the United States, because of the then Occupation.

In November, 1951, the plaintiff received a communication from the United States Consul at Tokyo, Japan, a copy of which is annexed hereto, marked Exhibit "A" and incorporated herein by reference. Thereupon, the plaintiff set about to comply with the various requirements listed in the memorandum, referred to in said Exhibit "A" including a certificate from the proper Japanese Army Authorities pertaining to the details of service by the plaintiff in the Japanese Army, a statement from the proper authorities at Hiroshima containing the details of the plaintiff's voting in Hiroshima during the post-war elections in Japan, and particularly, a record of birth in the United States.

With respect to the last item, the plaintiff encountered considerable delay because there was no record of the plaintiff's birth in Hawaii, either at the Board of Vital Statistics or at the office of the Secretary of the Territory of Hawaii at Honolulu; accordingly, it was necessary for the plaintiff to secure secondary evidence of the plaintiff's birth in the form of an affidavit of a person qualified to testify to the date and place of birth of the plaintiff.

In order to secure this secondary evidence, the plaintiff engaged in extended correspondence with

his cousin, George Fujii, who ultimately was able to secure an Affidavit of Identity from Goichi Morioka of Honolulu. This affidavit was secured in Honolulu on October 24, 1952, was forwarded to the plaintiff by air mail from Honolulu and was submitted by the plaintiff to the United States Consul in Tokyo immediately upon receipt by him of said Affidavit in Japan on October 29, 1952. On which date, the plaintiff filed with said United States Consul, a formal application for a passport as a United States citizen. Said application was accompanied by all of the documents required by the United States Consul pursuant to the letter from the United States Consul of November 8, 1951, and the requirements listed in the memorandum forwarded to the plaintiff by said United States Consul as set forth in Exhibit "A" annexed hereto.

The United States Consul at Tokyo with respect to the application by the plaintiff formally filed on October 29, 1952, did not act promptly thereon, but on the contrary neglected to act formally upon said application and inexcusably and arbitrarily postponed action until December 29, 1952, knowing well, during November and December, 1952, that on December 24, 1952, the Immigration and Nationality Act of 1952 was to go into effect.

Additionally, said United States Consul arbitrarily and inexcusably neglected to report his action of December 29, 1952, issuing a Certificate of Loss of Nationality to the plaintiff, so that said action of said Consul was not approved by the State

Department in Washington, D. C., until July 23, 1953.

By said action, the consular officials in Tokyo and the State Department officials in Washington acted as the agents of and for and on behalf of defendant and his predecessor in office and denied to plaintiff a right and privilege as a national of the United States on the ground that he is not a national thereof.

Wherefore, plaintiff prays for judgment declaring that he is a National of the United States and did not lose his United States citizenship by reason of his service in the Japanese Armed Forces or by reason of his having voted in said election in Japan in April, 1947.

Dated: June 4, 1956.

YOICHI FUJII,

Plaintiff, By

FONG, MIHO, CHOY AND  
CHUCK,

A. L. WIRIN & FRED  
OKRAND,

His Attorneys,

By /s/ FRED OKRAND.

Duly verified.

EXHIBIT A

The Foreign Service of the United States  
of America

Address Official Communication to:

American Consular Service,

Norin Chuo Kinko, 9 Yuraku-cho,

1-chome, Chiyoda Ku, Tokyo.

November 8, 1951.

Mr. Yoichi Fujii,

1172 Naka Meguro 3-chome,

Meguro Ku, Tokyo.

Sir:

Reference is made to previous correspondence between you and the Consulate at Yokohama.

It is noted that you have never made formal application to establish your claim to citizenship. You are invited therefore to apply for registration or for a passport to return to the United States. There is enclosed a memorandum entitled "American Citizenship of Persons of Japanese Ancestry Resident in Japan," which lists the items which are required in connection with an application for registration or passport. It is suggested that you comply with all the requirements listed in the memorandum, and then forward to this office the last page of the memorandum which is a request for appointment to establish your claim to citizenship. An application may be made by you even in the event that you

have performed an act which apparently resulted in the loss of United States citizenship.

Very truly yours,

RICHARD D. NETHERCUT,  
American Vice Consul.

Enclosure:

Memorandum.

[Endorsed]: Filed June 6, 1956.

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[Title of District Court and Cause.]

Civil No. 1300

### ORDER DENYING MOTION

A Motion to Set Aside Order of Dismissal filed in this matter on September 23, 1954, being filed on April 30, 1956, the matter having been fully argued and the plaintiff having been represented by his attorneys, A. L. Wirin, Esq., and Katsuro Miho, Esq.; and the defendant having been represented by his attorneys, Louis B. Blissard, United States Attorney for the District of Hawaii, and Charles B. Dwight III, Assistant United States Attorney for the District of Hawaii; and this Court having filed on June 20, 1956, a Ruling on Motion to Set Aside Order of Dismissal, finding the motion to be without merit:

It Is Hereby Ordered, Adjudged and Decreed that the Motion to Set Aside Order of Dismissal filed herein be and hereby is denied.

Dated Honolulu, T. H., this 11th day of July, 1956.

/s/ JON WIIG,

Judge, United States District  
Court for the District of  
Hawaii.

Approved as to Form:

/s/ K. MIHO,

Attorney for Plaintiff.

[Endorsed]: Filed July 11, 1956.

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[Title of District Court and Cause.]

Civil No. 1487

### MOTION TO DISMISS

Comes now John Foster Dulles, Secretary of State of the United States of America, defendant above named, by his attorneys, Louis B. Blissard, United States Attorney for the District of Hawaii, and E. D. Crumpacker, Assistant United States Attorney for the District of Hawaii, and hereby moves to dismiss the above-entitled action for the reason



that it appears upon the face of the complaint that the Court lacks jurisdiction of the subject matter, as more fully appears in the memorandum attached hereto.

Dated: Honolulu, T. H., this 6th day of August, 1956.

LOUIS B. BLISSARD,  
United States Attorney, District of Hawaii, At-  
torney for Defendant.

By /s/ E. D. CRUMPACKER,  
Asst. United States Attorney.

[Title of District Court and Cause.]

Civil No. 1487

### NOTICE

To: Fong, Miho, Choy & Chuck, 197 So. King Street, Honolulu, T. H., and A. L. Wirin & Fred Okrand, 257 So. Spring Street, Los Angeles 12, Calif., Attorneys for Plaintiff.

Please Take Notice that the foregoing Motion will be heard before the Honorable J. Frank McLaughlin, Judge of the above-entitled Court, in his courtroom in the Federal Building, Honolulu, T. H., on Monday, August 13, 1956, at 10:00 a.m., or as soon thereafter as counsel may be heard.



Dated: Honolulu, T. H., this 6th day of August, 1956.

LOUIS B. BLISSARD,  
United States Attorney, District of Hawaii, At-  
torney for Defendant.

By /s/ E. D. CRUMPACKER,  
Asst. United States Attorney.

[Endorsed]: Filed August 6, 1956.

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[Title of District Court and Cause.]

Civil No. 1487

### MOTION FOR SUMMARY JUDGMENT

Defendant, John Foster Dulles, Secretary of State of the United States of America, by his attorneys Louis B. Blissard, United States Attorney for the District of Hawaii, and Charles B. Dwight III, Assistant United States Attorney for the District of Hawaii, moves the Court to enter, pursuant to Rule 56 of the Federal Rules of Civil Procedure, a summary judgment in favor of Defendant and against Plaintiff on the ground that there is no genuine issue as to any material fact establishing that the questions presented by the Complaint filed herein have been decided upon the merits by this Court in Civil No. 1300, Yoichi Fujii v. John Foster Dulles, and that the Defendant is entitled to judgment as a

matter of law. This Motion is based upon the Memorandum of Points and Authorities and upon the records and files herein and in Civil No. 1300 in the United States District Court for the District of Hawaii.

Dated: Honolulu, T. H., this 4th day of June, 1957.

LOUIS B. BLISSARD,  
United States Attorney, District of Hawaii, At-  
torney for Defendant.

By /s/ CHARLES B. DWIGHT, III,  
Asst. United States Attorney.

[Title of District Court and Cause.]

Civil No. 1487

### NOTICE

To: Fong, Miho, Choy & Chuck, 197 South King Street, Honolulu, T. H., and A. L. Wirin & Fred Okrand, 257 South Spring Street, Los Angeles, California, Attorneys for Plaintiff.

You Are Hereby Notified that the foregoing Motion will be heard before the Honorable Jon Wiig, Judge of the United States District Court for the District of Hawaii, in his courtroom in the Federal Building, Honolulu, T. H., on the 14th day of June, 1957, at the hour of 2:00 p.m. on said date, or as soon thereafter as counsel may be heard.

Dated: Honolulu, T. H., this 4th day of June, 1957.

LOUIS B. BLISSARD,  
United States Attorney, District of Hawaii, Attor-  
ney for Defendant;

By /s/ CHARLES B. DWIGHT, III,  
Asst. United States Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed June 4, 1957.

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[Title of District Court and Cause.]

Civil No. 1487

RULING ON MOTION TO DISMISS  
AND FOR SUMMARY JUDGMENT

On December 23, 1952, plaintiff, Yoichi Fujii, filed a complaint (Civil No. 1300) in this Court, seeking a judgment that he was a citizen of the United States of America. It was alleged that the Court had jurisdiction under § 503 of the United States Nationality Act of 1940, 8 USCA, § 903. Plaintiff alleged that he was a citizen of the United States by virtue of his birth in Honolulu, Hawaii, on December 24, 1916; that his service in the Japanese Armed Forces was involuntary; that his voting in Japanese elections was involuntary; and that he had been denied the rights and privileges as a United States citizen because of the failure of the American Con-

sular Service at Tokyo, Japan, to issue a United States passport to him.

On September 23, 1954, the complaint as amended and supplemented was ordered and adjudged dismissed on Defendant's motion on the ground that it failed to state a claim or cause of action against the Defendant upon which relief could be granted because at the time the complaint was filed the plaintiff had not actually been denied a passport or other right or privilege as a national of the United States. Some nineteen (19) months later (April 30, 1956), plaintiff filed a Motion to Set Aside the Order of Dismissal, seeking relief under the provisions of Rule 60(b)(6), Federal Rules of Civil Procedure, which motion was denied primarily on the ground that the rule was not a substitute for an appeal. An order and judgment denying the motion was signed and filed on July 11, 1956, from which order and judgment an appeal was perfected to the Court of Appeals. This appeal was dismissed agreeably to a stipulation of counsel in September, 1956.

In the meantime, on June 6, 1956, plaintiff filed in this Court a petition seeking a similar determination as to his citizenship under 8 USCA, § 903 and § 405(a) of the Immigration and Nationality Act of 1952, note to 8 USCA, § 1101. The new complaint contained substantially the same allegations of fact as those set forth in the final complaint in Civil No. 1300. It is significant that nothing new was added which filled the voids in the earlier amended and supplemental complaint so that it could survive the

hurdle of a Motion to Dismiss on the ground that it failed to state a claim or cause of action against the Defendant upon which relief could be granted.

The Defendant moved to dismiss this complaint on the ground that, from its face, it appears that the Court lacks jurisdiction of the subject matter, and subsequently filed a motion for Summary Judgment pursuant to Rule 56, Federal Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact establishing that the questions presented by this complaint had been decided upon on their merits by the Court in Civil No. 1300, and that the Defendant is entitled to a judgment as a matter of law. Both motions will be considered as one for summary judgment.

It is recognized that, in this type of action, it is desirable that the law and the facts be construed in such a manner as to avoid a loss of citizenship<sup>1</sup>, but such construction is restricted by other rules of civil procedure. A plaintiff in a nationality case, like any other plaintiff, feeling that the trial court has erred, must take an appeal to obtain a reversal.

Rule 41(b) of the Federal Rules of Civil Procedure cannot be strictly applied at or after trials, but in this case must be read conjunctively with Rule 12(b)(6). The Court is aware that a motion to dismiss cannot be substituted for a trial on the merits, 1 Federal Practice and Procedure (Barron and Holtzoff) 608, § 349 n. 79, but such is not our concern. "This motion [to dismiss] has been de-

clared on the one hand to be essentially the same as a demurrer \* \* \*” 1 Federal Practice and Procedure (Barron and Holtzoff) 603, § 348, n. 65; “\* \* \* [and] performs the function formerly performed by a demurrer.” *Flanigan v. Security-First National Bank*, D.C. S. D. Cal. 1941, 41 F. Supp. 77, 79. “A decree entered upon demurrer is no less effective as *res judicata* than a decree rendered upon proof.” *Sacks v. Stecker*, 62 F.2d 65, 66 citing cases.<sup>2</sup>

Rule 41(b) of the Federal Rules of Civil Procedure when considered with Rule 12(b)(6) provides that a dismissal for failure to state a claim or cause of action upon which relief can be granted is an adjudication upon the merits and such a determination is an appealable order. Likewise, the order and judgment denying the Motion to Set Aside the Order of Dismissal in Civil No. 1300 was an appealable order. It is significant that neither judgment in Civil No. 1300 provided that the judgments did not amount to adjudications of the merits of the case. Each judgment was approved by plaintiff’s counsel. “A judgment dismissing an action after dismissal of the complaint for failure to state a claim is *res judicata* and bars another action on the same claim.” 2 Moore’s Federal Practice (2nd Ed.) par. 12.14, p. 2267.

The Court, having taken judicial notice of *Yoichi Fujii v. Dulles*, Civil No. 1300, in this Court<sup>3</sup> and having allowed matters outside the pleading to be presented,<sup>4</sup> finds that defendant’s Motion for Sum-



mary Judgment is timely presented. Rule 56, Federal Rules of Civil Procedure.

“A motion for summary judgment may be used by the defendant to assert the defense that plaintiff’s claim has been determined in another action and that the prior judgment is res judicata.”

3 Federal Practice and Procedure (Barron and Holtzoff) 128 § 1246 n. 86.<sup>5</sup>

There being no genuine issue as to any material fact, as a matter of law, the defendant is entitled to Summary Judgment.

Motions granted.

Dated at Honolulu, Hawaii, this 22nd day of November, 1957.

/s/ JON WIIG,

United States District Judge.

#### Footnotes

<sup>1</sup>Schneiderman v. U. S., 302 U. S. 118, 122; Junso Fujii v. Dulles, 224 F.2d 906, 907.

<sup>2</sup>Old Dominion Copper Mining and Smelting Co. v. Lewisohn, 202 F. 178; Northern Pacific Ry. v. Slight, 202 U. S. 122, 27 S. Ct. 442, 51 L. Ed. 738, 106 A.L.R. 437; W. E. Hedger Transp. Corporation v. Ira S. Bushey & Sons, Inc., E. D. N. Y. 1950, 92 F. Supp., 112, affirmed 186 F.2d, 236.

<sup>3</sup>Fletcher v. Evening Star Newspaper Co., D. C. Cir. 1942, 133 F.2d 395; Daley v. Sears, Roebuck & Co., N. D. Ohio, 1950, 90 F. Supp. 562, affirmed 182 F.2d 347.

<sup>4</sup>Fletcher v. Evening Star Newspaper Co., *supra*.

<sup>5</sup>Billings Utility Co. v. Advisory Committee, Board of Governors, 8 Cir. 1943, 135 F.2d 108; Daley v. Sears, Roebuck & Co., *supra*; 348 Bloomfield Avenue Corp. v. Montclair Mfg. Co., Inc., N. J. 1950, 90 F. Supp., 1020; Weekley v. Pennsylvania R. Co., E. D. Ill. 1952, 104 F. Supp. 899; Hadden, et al., v. United States, C. Cl. 1952, 105 F. Supp. 1010; R. V. Kimble v. Anderson-Tully Company, E.D. Ark. 1955, 16 F. R. D. 502.

[Endorsed]: Filed November 22, 1957.

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In the United States District Court  
for the District of Hawaii

Civil No. 1487

YOICHI FUJII,

Plaintiff,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,

Defendant.

### ORDER AND JUDGMENT

This matter having come on for hearing on Motion to Dismiss and for Summary Judgment on June 10, 1957, Plaintiff having been represented by A. L. Wirin, Esquire, and the Defendant having been represented by Louis B. Blissard, United States Attorney for District of Hawaii, and Charles B.



Dwight III, Assistant United States Attorney for the District of Hawaii; the matter having been fully argued and considered, and a Ruling on Motion to Dismiss and for Summary Judgment having been filed on November 22, 1957; Now, Therefore, It Is Hereby

Ordered, Adjudged and Decreed that the Motion for Summary Judgment by the Defendant be and it is hereby granted and, It Is

Further Ordered that Summary Judgment be and it is hereby entered for the Defendant.

Dated: New York, N. Y., this 16th day of December, 1957.

/s/ JON WIIG,  
Judge, United States District Court for the District  
of Hawaii.

No Objection as to Form:

FONG, MIHO, CHOY & CHUCK  
ROY E. TAKUSHI, A. L.  
WIRIN & FRED OKRAND,  
Attorneys for Plaintiff,

By /s/ FRED OKRAND.

[Endorsed]: Filed and entered December 20,  
1957.

[Title of District Court and Cause.]

Civil No. 1487

### NOTICE OF APPEAL

Notice Is Hereby Given that Yoichi Fujii, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the judgment entered in this action on December 20, 1957.

Dated: This 17th day of December, 1957.

ROY E. TAKUSHI, A. L. WIRIN  
& FRED OKRAND,

By /s/ FRED OKRAND,  
Attorneys for Appellant.

Receipt of Copy acknowledged.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 20, 1957.

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[Title of District Court and Cause.]

Civil No. 1487

### ORDER EXTENDING TIME TO FILE RECORD AND DOCKET APPEAL

It is by the Court this 17th day of February, 1958,  
Ordered:

That the time for filing the record on appeal and docketing the appeal in the United States Court

of Appeals for the Ninth Circuit be, and it hereby is, extended to and including February 28, 1958.

/s/ J. FRANK McLAUGHLIN,  
United States District Judge.

[Endorsed]: Filed February 17, 1958.

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[Title of District Court and Cause.]

Civil No. 1300

### DOCKET ENTRIES

1952

- Dec. 23—Filing Complaint. Issuing Summons, certifying four copies, three for service, five to U. S. Marshal.
- Dec. 24—Filing U. S. Marshal's Return on Service of Writ (served).

1953

- Feb. 11—Filing Motion to Dismiss and Memorandum of Points and Authorities.
- Dec. 2—Filing Notice of Motion for Leave to File Amended Complaint.
- Dec. 28—Entering Proceedings — Motion set for hearing December 30, 1953, at 9 a.m.
- Dec. 30—Entering Proceedings at hearing on Motion — Arguments — Ruling Deferred — to file memos by January 20, 1954.

1954

- Jan. 14—Filing Stipulation and Order, etc. February 19, 1954.

1954

- Feb. 18—Filing Plaintiff's Memorandum in Support of Motion for Leave to file Amended Complaint and of Motion for Joinder of Additional Parties Plaintiff.
- Feb. 19—Filing Stipulation and Order Enlarging Time (March 24, 1954).
- Mar. 18—Filing Plaintiff's Supplemental Memorandum in Support of Motion for Leave to File Amended Complaint and of Motion for Joinder of Additional Parties Plaintiff.
- Mar. 23—Defendants' Memorandum in Opposition to Motion for Leave to File Amended Complaint and to Motion for Joinder of Additional Parties Plaintiff filed
- May 28—Ruling on Motion to Amend and Motion to Dismiss Complaint filed (Wiig). (Motion to dismiss granted—30 days to amend.)
- June 25—Amended and Supplemental Complaint filed.
- July 7—Motion to Strike, Motion to Dismiss Amended and Supplemental Complaint and Notice of Hearing filed.
- Aug. 24—Entering proceedings at hearing on Motion to Strike and Motion to Dismiss—Arguments by Counsel—Motion to Strike Granted—Motion to Dismiss Granted—Order to be signed upon presentation.
- Sept. 23—Order of Dismissal filed.

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- Apr. 30—Notice of Motions: 1. To set aside and relieve plaintiff of: (a) Order of Dismissal and (b) Order striking portions of amended and supplemental complaint; 2. For leave of Court to file amendment to amended and supplemental complaint filed.
- Apr. 30—Motion for leave of court to file amendment to amended and supplemental complaint—Affidavit of A. L. Wirin in support of motion for leave to file amendment to amended and supplemental complaint—Amendment to amended and supplemental complaint filed.
- Apr. 30—Motions to set aside and relieve plaintiff of: (a) Order of Dismissal and (b) Order Striking Portions of Amended and Supplemental Complaint; Affidavit; Points and Authorities.
- May 2—Memorandum in Opposition to Motion to Set Aside and Relieve Plaintiff of Order of Dismissal and Order Striking portions of Amended and Supplemental Complaint filed.
- May 11—Entering proceedings at hearing on Motions to Set Aside Order of Dismissal, etc.—Arguments by Wirin and Miho for petitioner and Dwight for defendant—Matter taken under advisement.
- June 20—Ruling on Motion to Set Aside Order of Dismissal filed. Wiig—Motion Denied.

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June 20—Copies mailed to A. L. Wirin, Los Angeles, Calif.; Fong, Miho, Choy and Chuck, Honolulu, T. H.

June 20—Copy to U. S. Attorney.

July 11—Order Denying Motion filed. Wiig. Copy to U. S. Attorney, Miho and Wirin.

July 30—Notice of Appeal filed.

July 30—Statement of Points upon which Appellant Intends to Rely on Appeal filed.

July 30—Designation of Record on Appeal filed.

July 30—U. S. Attorney advised by letter with copy of Notice of Appeal attached.

Aug. 1—Counter-Designation of Record on Appeal filed.

Aug. 17—Transcript of Proceedings filed—Original—August 24, 1954.

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[Title of District Court and Cause.]

Civil No. 1487

### CERTIFICATE OF CLERK

United States of America,  
District of Hawaii—ss.

I, William F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled cause, numbered from Page 1 to Page 38a, consists of a statement of the names and addresses of the attorneys of record and of the

various original pleadings as hereinbelow listed and indicated:

Complaint.

Motion to Dismiss, Memorandum of Points and Authorities, and Notice.

Motion for Summary Judgment, Memorandum of Points and Authorities, and Notice.

Ruling on Motion to Dismiss and for Summary Judgment.

Order and Judgment.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Order Extending Time to File Record and Docket Appeal.

I further certify that I have included herewith, Pages numbered from 42 to 83, the original pleadings in Civil No. 1300 of this Court, Yoichi Fujii, vs. John Foster Dulles, etc., as hereinbelow listed and indicated:

Complaint.

Motion to Dismiss and Memorandum of Points and Authorities.

Notice of Motion for Leave to File Amended Complaint.

Amended and Supplemental Complaint.

Motion to Strike, Motion to Dismiss Amended and Supplemental Complaint, and Notice of Hearing.

Order of Dismissal.

Motion for Leave of Court to File Amendment to Amended and Supplemental Complaint.



Affidavit of A. L. Wirin, etc., Amendment to Amended and Supplemental Complaint.

Motions to Set Aside and Relieve Plaintiff of: (a) Order of Dismissal and (b) Order Striking Portions of Amended and Supplemental Complaint; Affidavit; Points and Authorities.

Order Denying Motion.

I further certify that included herewith is a copy of the Docket Entries in Civil No. 1300.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 18th day of February, 1958.

[Seal]      /s/ WM. F. THOMPSON, JR.,  
Clerk.

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[Endorsed]: No. 15902. United States Court of Appeals for the Ninth Circuit. Yoichi Fujii, Appellant, vs. John Foster Dulles, Secretary of State of the United States, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Hawaii.

Filed February 19, 1958.

Docketed: February 24, 1958.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit  
No. 15902

YOICHI FUJII,

Appellant,

vs.

JOHN FOSTER DULLES, Secretary of State of  
the United States of America,  
Defendant.

STATEMENT OF POINTS ON WHICH AP-  
PELLANT INTENDS TO RELY; AND  
DESIGNATION OF THE PORTIONS OF  
THE RECORD MATERIAL TO THE AP-  
PEAL.

Pursuant to Rule 17(6) of This Court, Appellant  
States the Following as the Points on Which he  
Intends to Rely:

1. The trial court erred in granting defendant's  
Motion to Dismiss;
2. The trial court erred in granting defendant's  
Motion for Summary Judgment;
3. The trial court erred in entering Summary  
Judgment for defendant.

Dated: March 5, 1958.

ROY E. TAKUSHI,

A. L. WIRIN & FRED OKRAND,

By /s/ FRED OKRAND,

Attorneys for Appellant.

[Endorsed]: Filed March 6, 1958.

